

OPINION
51-48

April 18, 1951 (OPINION)

CRIMINAL PROCEDURE

RE: Arrest

Your letter of April 12, 1951, concerning arresting procedure for certain traffic violations, has been received.

Section 39-0709, of the North Dakota Revised Code of 1943, provides in part that:

The arresting officer forthwith shall take any such person (one arrested and charged with any of the listed specific violations) before the nearest or most accessible magistrate."

If the arresting officer did not follow this procedure, but rather released the accused upon written promise to appear, under the provisions of section 39-0708, then, of course, he is guilty of misconduct in office and is subject to removal from office under section 39-0710.

You request the opinion of this office as to whether or not the violation of the statutory procedure by the arresting officer can be used as a good defense on behalf of the person accused of the traffic violation.

We agree that the purpose of section 39-0709 was to insure the apprehension and early trial of persons charged with a serious traffic violation, and it was not the intention of the legislature that they should provide those violators with any peculiar protection.

It is our opinion that such misconduct by the arresting officer is not a valid defense to the original charge of a traffic violation. Rather the deviation is the commission of a new offense; an act of misconduct between the arresting officer and the state.

ELMO T. CHRISTIANSON

Attorney General